

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

ULTRACLEAN FUEL (TRANSMIX), LLC,

Plaintiff,

v.

Case No.

LDC ENERGY, LLC,

Jury Demand

Defendant.

**PLAINTIFF’S COMPLAINT FOR BREACH OF CONTRACT
AND BREACH OF GOOD FAITH AND FAIR DEALING**

COMES NOW Plaintiff Ultraclean Fuel (Transmix), LLC by and through its attorneys Ray | Peña | McChristian, P.C. (Jeremy I. Schmehl and Ryan Vetter) and files this Complaint for Breach of Contract, and in support of its claims states as follows:

I. THE PARTIES

1. Plaintiff Ultraclean Fuel (Transmix), LLC (“UCF Transmix”) is a Delaware limited liability company with its principal place of business located at 251 Little Falls Drive, Wilmington, Delaware.

2. Defendant LDC Energy, LLC (“LDC Energy”) is a New Mexico limited liability company and wholly owned subsidiary of Laguna Development Corporation (“LDC”). Upon information and belief, LDC Energy has its principal place of business located at 700 Comanche Road Northeast, Albuquerque, New Mexico. Defendant LDC Energy can be served with process through CT Corporation System which is located at 2016 S. Coronado Ave., Espanola, NM 87532.

II. JURISDICTION AND VENUE

3. UCF Transmix and LDC Energy entered into a series of contracts and agreed that any dispute arising therefrom could be brought in New Mexico Federal District Court where the

events giving rise to this lawsuit occurred. *See* Laguna FPA, Ultraclean Fuel (Transmix), LLC and LDC Energy, LLC, June 20, 2017, attached hereto as Exhibit A at pg. 3, 3(b) and (c).

III. FACTUAL BACKGROUND

A. LDC and UCF Enter into the Laguna FPA and Other Agreements to Process and Sell Hydrocarbons.

4. LDC is a Pueblo of Laguna (“Laguna”) owned business.

5. Laguna is located in New Mexico about forty-five miles to the west of Albuquerque on land adjacent to Interstate 40. The Laguna reservation consists of approximately 530,000 acres of land situated in Cibola, Valencia, Bernalillo and Sandoval counties.

6. LDC Energy is a subsidiary of LDC.

7. Beginning on or around 2003, LDC was granted an assignment by Laguna to use tribal land for the development, construction, and operation of a facility to process transmix into gasoline and diesel for sale.

8. Transmix is a mixture of gasoline, diesel, and jet fuel that occurs when multiple fuel products are transported through the same pipeline. After processing transmix to an acceptable level it can be sold as gasoline and diesel fuel for sale in unrestricted markets.

9. The Transmix Plant (or “Site”) is located on Laguna land near Interstate 40 Exit 131.

10. Ultraclean Fuel Pty Limited (“UCF”), an Australian corporation, and its subsidiaries had developed the patented Ultrex[®] solution for the separation of sulfur from diesel, marine light fuels, light cycle oils, clarified oils/FCC slurry oils and Group I base oils (“Technology”).

11. UCF has American subsidiaries, including UCF Transmix.

12. UCF and LDC entered into a Supply Agreement in 2011 whereby UCF was to

install a Processing Unit (“Laguna Ultrex[®] Unit”) at the Site to reduce the sulfur level in diesel provided to it by LDC. *See* Supply Agreement between Laguna Development Corp. and Ultraclean Fuel Pty. Ltd., September 11, 2011, attached hereto as Exhibit B at pg. 2.

13. The intention was to have UCF install the Laguna Ultrex[®] Unit at the Site so that UCF could demonstrate its Technology to LDC. *Id.*

14. During this initial demonstration phase, LDC did not have to pay UCF a processing fee for the diesel that it converted into ultra-low sulfur fuel. *Id.* at pg. 3.

15. UCF also did not have to pay for the diesel provided to it by LDC for processing. *Id.*

16. After the initial testing phase, UCF established that the Laguna Ultrex[®] Unit was capable of processing diesel, then the Supply Agreement was to remain in effect for ten (10) years during which LDC was required to pay UCF for its processing of diesel. *Id.* at pg. 4-5.

17. After the initial Supply Agreement, there were several novations between UCF and LDC entities resulting in LDC Energy and UCF Transmix undertaking obligations in a restated Fuel Processing Agreement (or “Laguna FPA”) dated June 2017. *See*, Exhibit A, at pg. 1.

18. The Laguna FPA depended upon several other documents, including the Co-Ordination Agreement, the Master Fuel Processing Agreement, the Master Lease Agreement, the Loan Facility Agreement, the LDC Energy Licence Agreement, the UCF Backstop Licence Agreement and the UCF Diesel Backstop Licence Agreement. *Id.*

19. These documents anticipated collaboration between LDC Energy and UCF Transmix relative to “(a) the provision of processing services by UCF Transmix to feedstock provided by LDC Energy; (b) the provision of processing services through the use of Ultrex[®] Units; (c) the manufacture, installation and commissioning of Ultrex[®] Units by the EPC Contractor for

UCF; (d) the funding of the manufacture and commissioning of the Ultrex[®] Units by loans made by LDC Energy to UCF; (e) the leasing of Ultrex[®] Units to UCF Transmix to enable the provision of processing services; and (f) in certain limited circumstances, the licensing of LDC Energy to use the intellectual property to complete processing services.” *See* Co-Ordination Agreement between Ultraclean Fuel Limited, Ultraclean Fuel (US) Pty Limited, Ultraclean Fuel (Transmix), LLC, Laguna Development Corporation and LDC Energy, LLC at pg. 3-4, attached hereto as Exhibit C.

B. History of the Laguna Ultrex[®] Unit and it being Commissioned.

20. Installation of the Laguna Ultrex[®] Unit commenced in 2013 and modifications became necessary for the final stages of the process before it became operational.

21. The modifications to the Laguna Ultrex[®] Unit involved the physical removal of sulfur from diesel that was being processed after it had been oxidized using an Ultraclean proprietary technology.

22. While there were delays in bringing the Laguna Ultrex[®] Unit into production, many of them occurred before subsequent agreements (including the Laguna FPA, Co-Ordination Agreement and the Loan Facility Agreement) between UCF and LDC entities in June 2017. Neither LDC nor LDC Energy raised any objection to these delays prior to entering into these Agreements.

23. Pursuant to the Co-Ordination Agreement, the Laguna Ultrex[®] Unit was “commissioned” once it had been operating in full auto mode on a sustained basis processing one hundred percent (100%) of the diesel provided to it by LDC Energy. *See*, Exhibit C, at pg. 36.

24. On November 30, 2018, UCF Transmix provided written notice to LDC Energy that the Laguna Ultrex[®] Unit had been commissioned which meant, among other obligations, that

LDC Energy was to commence payment of fuel processing fees to UCF Transmix for diesel that it processed. The date of commissioning is synonymous with the “effective date” which marked the accrual of obligations pursuant to the Laguna FPA. *See* Exhibit A, at pg. 5.

25. Pursuant to the Laguna FPA, LDC Energy was required to pay UCF Transmix a processing charge of \$.125 per gallon of one thousand gallons of diesel processed or a minimum charge of \$1,250 per day upon commissioning. *Id.* at pg. 4.

26. Commissioning the Laguna Ultrex[®] Unit also meant that LDC Energy became responsible for providing feedstock equal to not less than fifty percent (50%) of the processing capacity of the Laguna Ultrex[®] Unit which was one thousand (1,000) barrels per day.

27. LDC Energy’s obligation to continue providing feedstock/diesel to the Laguna Ultrex[®] Unit and paying UCF Transmix a processing fee was also to be in effect for ten years from November 2018. *Id.*

28. LDC Energy did not dispute the commissioning notice from UCF Transmix, and invoices were submitted to LDC Energy for the payment of fees related to the processing of feedstock. After the Laguna Ultrex[®] Unit was commissioned in November 2018, UCF Transmix processed all diesel except for a few occasions when the product provided by LDC Energy deviated from the prescribed feedstock and diesel specifications required by the Laguna Ultrex[®] Unit.

29. LDC Energy’s failure to provide adequate feedstock to UCF Transmix resulted in the nonuse of the Laguna Ultrex[®] Unit on several occasions between November 2018 and December 2019.

30. As evidence that the Laguna Ultrex[®] Unit had been commissioned, UCF Transmix processed more than one million gallons of feedstock/diesel for which LDC Energy paid \$81,071.76 for processing services provided up to December 2019.

C. Spills at the Site and Environmental Analysis Result in LDC Energy Terminating the Laguna FPA.

31. In January 2013, before any equipment was installed by UCF, LDC installed a plastic and gravel bund meant to contain any potential spills at or near the Laguna Ultrex[®] Unit.

32. In March 2013, UCF installed five skids and one storage tank into the plastic banded area.

33. In 2016, LDC twice contracted to have the plastic banded area expanded, first with a black plastic liner and then with an additional clear plastic liner.

34. In 2018, UCF arranged the design and installation of the concrete bund. This bund was adjacent to and separate from the containment area bounded by the three plastic bunds and housed a larger distillation column.

35. LDC was responsible for building the bund and containment system underneath the Laguna Ultrex[®] Unit.

36. The Laguna FPA also required the parties to assure that insurance was in place to cover environmental risk. Exhibit A, at pg. 10. LDC and UCF Transmix agreed to share the cost of an environmental risk policy: UCF Transmix 35.7% and LDC Energy 64.3%. *Id.*

37. During the time UCF Transmix worked at the Site to process diesel there were spills of hydrocarbons and contaminated water onto the surface of the land that were caused by LDC Energy and UCF Transmix.

38. On or about July 2019, LDC Energy retained an environmental consultant to investigate the extent of surface and subsurface contamination at the Site given historical spills of hydrocarbons and other wastewater contaminants. As part of this investigation, it was also found that there was subsurface contamination under the Laguna Ultrex[®] Unit that occurred given the insufficiency of the plastic lined containment system beneath sections of the Laguna Ultrex[®] Unit.

39. After the discovery of surface and subsurface contaminants at the Site, LDC was required to remediate the soil by relevant authorities.

40. In August 2019, LDC Energy contacted UCF Transmix about the contamination below the Laguna Ultrex[®] Unit so that the parties could work together to remediate the contamination and assure that appropriate systems were put in place to avoid further spills or leakages underneath the Laguna Ultrex[®] Unit. There was also discussion between LDC Energy and UCF Transmix that each party would contact their respective insurance carriers to repair the area and reinstall systems so that processing operations could continue.

41. UCF Transmix and LDC Energy anticipated that spills might occur at the Site and the occurrence of a spill was not a basis for either party to terminate the Laguna FPA. *See* Exhibit A, at pg. 14. However, LDC Energy did not expect that any spills from the Laguna Ultrex[®] Unit might invade the subsurface given the presence of a concrete containment area.

42. Pursuant to the Laguna FPA, LDC Energy was required to provide UCF Transmix six (6) months prior notice if it wished to terminate the Agreement. *See* Exhibit A, at pg. 14.

43. In December 2019, a demonstration of the Laguna Ultrex[®] Unit was provided to potential clients with LDC providing feedstock to UCF Transmix and the resultant product being returned to LDC. The demonstration was intended to seek out additional buyers of the Ultraclean technology as facilitated by LDC's domestic marketing efforts.

44. Around this same time, LDC Energy started dismantling and remediation of their tank farm at the Site so that cleanup efforts could commence relative to past spills.

45. In March 2020, there was a spill at the Site located outside the Laguna Ultrex[®] Unit banded area, when an LDC Energy tank, which was storing contaminated waste water from the Laguna Ultrex[®] Unit, failed. The tank failure resulted in contaminated wastewater being spilled

onto the surface of the Site and LDC Energy, along with its environmental consultant, began a remediation effort to clean up the spill.

46. In May 2020, LDC Energy removed stored hydrocarbons and wastewater from the Site and instructed UCF Transmix to remove all Consumables (diesel and other chemicals) from the Site.

47. Pursuant to the Laguna FPA, LDC Energy was required to provide storage for all Consumables at the Site and UCF Transmix arranged for the supply of Consumables so that feedstock could be processed. *See*, Exhibit A, at pg. 7; *see also* Exhibit C at pg. 37.

48. LDC Energy has never provided UCF Transmix or any other UCF entity with a notice of termination pursuant to the Laguna FPA, however, requiring UCF Transmix to remove all Consumables from the Site had the effect of terminating the agreement as it was contrary to LDC Energy's obligation to store all Consumables at the Site. *See* Exhibit A, at pg. 6.

49. No event of default, insolvency event or casualty event occurred prior to LDC Energy removing the Consumables from the Site. *Id.* at pg. 14; *see also* Exhibit C at pg. 35, 39-46, 50-51.

COUNT I- BREACH OF CONTRACT

50. UCF Transmix realleges and incorporates all prior allegations and paragraphs as if fully set forth herein.

51. UCF Transmix and LDC Energy entered into the Laguna FPA which required LDC Energy to pay for processing services provided by UCF Transmix once the Laguna Ultrex[®] Unit was commissioned.

52. The Laguna Ultrex[®] Unit was commissioned and the Laguna FPA became effective on or about November 30, 2018, after which time LDC Energy became responsible for the payment

of processing fees rendered by UCF Transmix.

53. After November 2018, LDC Energy commenced payment of invoiced processing fees as evidence of the fact that the Laguna Ultrex Unit[®] was commissioned and the Laguna FPA became effective.

54. UCF Transmix materially complied with all obligations under the Laguna FPA.

55. LDC Energy breached material terms set forth in the Laguna FPA by terminating the Agreement without cause.

56. As a result of LDC Energy's breach of material terms in the Laguna FPA, UCF Transmix suffered damages and continues to suffer damages.

COUNT II- BREACH OF GOOD FAITH AND FAIR DEALING

57. UCF Transmix realleges and incorporates all prior allegations and paragraphs as if fully set forth herein.

58. Under the covenant of good faith and fair dealing, LDC Energy had a duty not to do anything that would injure UCF Transmix's right to receive the benefits contracted for in the Laguna FPA.

59. LDC Energy breached the covenant of good faith and fair dealing by among other things:

- A. Refusing to adhere to the term and obligations of the Laguna FPA;
- B. Misrepresenting LDC Energy's compliance with the Laguna FPA;
- C. Misrepresenting LDC Energy's obligations under the terms of the Laguna FPA; and
- D. Refusing to pay UCF Transmix monies due for processing services performed by UCF Transmix, insurance costs and other expenses.

60. As a direct result of LDC Energy's breach of the covenant of good faith and fair

dealing, UCF Transmix suffered and continues to suffer damages.

COUNT III- REFORMATION OF THE CONTRACT

61. UCF Transmix realleges and incorporates all prior allegations and paragraphs as if fully set forth herein.

62. LDC Energy misrepresented material terms of the Parties' Agreements.

63. Specifically, LDC Energy misrepresented their agreement to adhere to the payment of processing fees for services performed and rendered for a term of ten (10) years given the commissioning of the Laguna Ultrex[®] Unit, failed to pay its portion of insurance costs while the Parties operated under the Laguna FPA, and failed to meet other obligations pursuant to the Laguna FPA.

64. UCF Transmix justifiably relied on the representations of LDC Energy relating to these obligations.

65. Had UCF Transmix known about the misrepresentations by LDC Energy prior to executing the Parties' Agreements, UCF Transmix would not have entered into the Parties' Agreements.

66. LDC Energy's misrepresentations of materials terms of the Parties' Agreements allows this Court to reform the terms of the Parties' Agreements.

67. This Court, as a matter of equity, may properly reform the Parties' Agreements to include the recovery of consequential damages due to the misrepresentations by LDC Energy.

DAMAGES

68. UCF Transmix realleges and incorporates all prior allegations and paragraphs as if fully set forth herein.

69. As a direct result of the breach of contract by LDC Energy, UCF Transmix is

entitled to recover compensatory and reliance damages in an amount to be determined at trial.

70. As a direct result of the breach of the covenant of good faith and fair dealing by LDC Energy, UCF Transmix is entitled to recover compensatory and reliance damages in an amount to be determined at trial.

71. As a direct result of the reckless or intentional acts and conduct by LDC Energy, UCF Transmix is entitled to recover punitive damages in an amount to be determined at trial.

72. UCF Transmix is entitled to recover pre-judgment and post-judgment interest.

WHEREFORE, UCF Transmix requests Judgement and relief against LDC Energy as set forth above, including:

- A. Compensatory and reliance damages;
- B. Punitive damages;
- C. Award of pre-judgment and post-judgment interest on any amounts recovered; and
- D. Such other further relief as the Court may deem appropriate.

Respectfully submitted,

RAY | PEÑA | MCCHRISTIAN, P.C.

/s/Jeramy I. Schmehl

Jeramy I. Schmehl

6501 Americas Pkwy NE, Suite 820

Albuquerque, NM 87110

(505) 212-8020

jschmehl@raylaw.com

*Attorneys for Defendant Ultraclean Fuel
(Transmix), LLC.*

THIS IS TO CERTIFY that on this 30th day of April, 2025, a copy of the foregoing pleading was filed electronically through the CM/ECF system, which will cause counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/Jeramy I. Schmehl